

PEARSON, J.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

JEROME RICHARDSON,)	
)	CASE NO. 5:18CV2226
Petitioner,)	
)	
v.)	JUDGE BENITA Y. PEARSON
)	
DAVID J. EBBERT, Warden,)	
)	<u>MEMORANDUM OF OPINION AND</u>
Respondent.)	<u>ORDER</u>

Pro se Petitioner Jerome Richardson, a federal prisoner incarcerated at the United States Penitentiary in Lewisburg, Pennsylvania, has filed a petition for writ of habeas corpus pursuant to [28 U.S.C. § 2241](#). [ECF No. 1](#). Petitioner originally filed the petition in the United States District Court for the Middle District of Pennsylvania. *See id.* The Pennsylvania District Court transferred the case to this Court because the petition challenges this Court's sentencing of Petitioner in a 2013 criminal case, [United States v. Richardson, Case No. 5:13-CR-87](#), ECF Nos. [7](#), [8](#). Petitioner also has filed a motion to proceed *in forma pauperis*, which is granted. [ECF No. 6](#). For the following reasons, the petition is dismissed.

I. Background

On August 9, 2013, Petitioner entered a guilty plea before this Court to a charge of robbery in the case [United States v. Richardson, Case No. 5:13-CR-87](#). *See* Case No. 5:13-CR-87, [ECF No. 31](#) (Report and Recommendation on Plea of Guilty). On December 23, 2013, the Court sentenced him to 151 months' imprisonment and three additional years of supervised

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release. Case No. 5:13-CR-87, [ECF No. 42](#) (Sentencing Judgment). As part of his sentencing, he was classified as a career offender under the United States Sentencing Guidelines and received an enhanced sentence under the Sentencing Guideline's residual clause ([§ 4B1.1](#)).

Petitioner filed a *pro se* petition to vacate his sentence under [28 U.S.C. § 2255](#) in the 2013 Criminal Case on July 5, 2016. Case No. 5:13-CR-87, [ECF No. 50](#). In the petition, he claimed the sentence enhancement was unconstitutional under [Johnson v. United States, 135 S. Ct. 2551, 2563 \(2015\)](#), which invalidated the Armed Career Criminal Act's ("ACCA") residual clause as unconstitutionally vague under the Due Process Clause of the Fifth Amendment. Case No. 5:13-CR-87, [ECF No. 50 at PageID#: 280-81](#).

In August 2016, Petitioner's § 2255 petition was stayed and held in abeyance pending a decision in *Beckles v. United States*, in which the Supreme Court was to consider whether *Johnson* could be invoked in § 2255 actions challenging Guidelines-based sentences. *See* Case No. 5:13-CR-87, [ECF No. 55](#). On March 6, 2017, the Supreme Court issued its decision in *Beckles*, holding that the Sentencing Guidelines' residual clause remains valid after *Johnson* because the Guidelines, unlike the ACCA, "do not fix the permissible range of sentences," and thus "are not subject to a vagueness challenge under the Due Process Clause." [Beckles v. United States, 137 S. Ct. 886, 892 \(2017\)](#).

In this § 2241 petition, Petitioner requests that the Court: (1) lift the stay-and-abeyance of his § 2255 petition in the 2013 Criminal Case; and (2) correct his sentence in accordance with *Johnson*. [ECF No. 1 at PageID #: 6](#).

II. Discussion

The petition must be dismissed. District courts conduct a preliminary review of habeas corpus petitions to determine whether “it plainly appears from the petition and any attached exhibits that the petitioner is not entitled to relief.” Rule 4 of the [Rules Governing Habeas Corpus Cases Under Section 2254](#) (applicable to habeas petitions under § 2241 pursuant to Rule 1(b)). If so, the petition must be summarily dismissed. See [Allen v. Perini, 424 F.2d 134, 141 \(6th Cir. 1970\)](#) (the district court has “a duty to screen out a habeas corpus petition which should be dismissed for lack of merit on its face”).

Generally, habeas corpus petitions challenging the validity of a federal conviction or sentence are brought under [28 U.S.C. § 2255](#), whereas habeas petitions challenging the manner or execution of a sentence are brought under [28 U.S.C. § 2241](#). [Hill v. Masters, 836 F.3d 591, 594 \(6th Cir. 2016\)](#). In *Hill*, the Sixth Circuit held that a sentence-enhancement claim may be raised in a § 2241 petition in a “narrow subset” of cases by prisoners:

(1) . . . who were sentenced under the mandatory guidelines regime pre-*United States v. Booker*, (2) who are foreclosed from filing a successive petition under § 2255, and (3) when a subsequent, retroactive change in statutory interpretation by the Supreme Court reveals that a previous conviction is not a predicate offense for a career-offender enhancement.

[Id. at 599-600](#) (citation omitted).

Petitioner’s petition on its face does not fall within *Hill*’s exception. Petitioner was not sentenced under the pre-*Booker* mandatory guideline regime but was sentenced post-*Booker*, on December 23, 2013. See [ECF No. 1 at PageID # 2](#). He also was not foreclosed from filing a successive petition under § 2255. He did just that, and that petition remains pending. Case No.

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5:13-CR-87, [ECF No. 50](#). Finally, there is no subsequent, retroactive change in statutory interpretation by the Supreme Court revealing that a previous conviction is not a predicate offense for a career-offender enhancement.

III. Conclusion

Accordingly, Petitioner's § 2241 petition for writ of habeas corpus is dismissed. The Court certifies, pursuant to [28 U.S.C. § 1915\(a\)\(3\)](#), that an appeal from this decision could not be taken in good faith.

IT IS SO ORDERED.

February 28, 2019
Date

/s/ Benita Y. Pearson
Benita Y. Pearson
United States District Judge